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Attorneys for Non-Party
REDDIT, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re: Subpoena Reddit, Inc.

Case No. 4:23-mc-80119-KAW

(Originating Case: *Silva v. Doe I*, et al., S.D.
Fla. 1:22-cv-24262-RKA)

**REDDIT, INC.'S RESPONSE TO
MOTION TO COMPEL**

Hearing Date: TBD

Time: TBD

Judge: Magistrate Judge Westmore

I. INTRODUCTION

Plaintiff Riccardo Silva’s (“Plaintiff”) Motion to Compel asks the Court to compel Reddit to unmask an anonymous Reddit user (the “Target User”) who alleges that Plaintiff sexually harassed her and other women in the modeling industry. Dkt. 1–1 at 10-13. Given the seriousness of these allegations, Reddit asks the Court to determine whether Plaintiff has satisfied the applicable First Amendment standard for unmasking anonymous online speakers.

As Plaintiff acknowledges, the applicable First Amendment standard requires a court to “(1) notify the speaker and provide them with an opportunity to (anonymously) defend their anonymity; (2) require the party seeking disclosure to make a prima facie showing on the merits of their claim; and (3) balance the equities, weighing the potential harm to the party seeking disclosure against the speaker’s interest in anonymity, in light of the strength of the underlying claim.” *In re DMCA § 512(h) Subpoena to Twitter, Inc.* (“*In re DMCA*”), 608 F. Supp. 3d 868, 876 (N.D. Cal. 2022); *see also* Mot. 7-8.

Here, the notice requirement has likely been met, as Reddit has notified the subject user of Plaintiff’s subpoenas and the instant Motion; however, Plaintiff must still establish a prima facie showing of his claims for defamation, stalking, and intentional infliction of emotional distress under Florida law, and demonstrate that the balance of equities tips in his favor and justifies infringing on the Target User’s established First Amendment right to speak anonymously. Notably, Plaintiff did not file a declaration in support of the Motion, and the absence of such declaration puts into question whether Plaintiff has provided a “real evidentiary basis” to support his claims. *Wirt v. Twitter, Inc.*, No. 21-mc-80166-JSC, 2021 WL 5919846, at *1 (N.D. Cal. Dec. 15, 2021) (the absence of a declaration may constitute a failure to “persuade the court that there is a real evidentiary basis for believing that the [speaker] has engaged in wrongful conduct that has caused real harm to the interests of the plaintiff.”); *Kechara House Buddhist Association Malaysia v. Does*, No. 15–cv–00332–DMR, 2015 WL 5538999, at *4 (N.D. Cal. Sept. 18, 2015) (plaintiff may not rest on its pleadings to provide a “real evidentiary basis” for a defamation claim against Doe Defendants).

Further, and relevant to assessing the balance of equities, Plaintiff’s proposed unmasking could have a chilling effect on speech that is a matter of public concern. *See, e.g., Guzman v. Finch*,

No. 19CV412-MMA (MDD), 2019 WL 1877184, at *6 (S.D. Cal. Apr. 26, 2019) (finding that defendant’s Facebook post, which was about alleged sexual abuse, was a matter of public concern); *see also Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011) (speech that is “matter[] of public concern” is “at the heart of the First Amendment’s protection.”). Given the sensitive nature of the Target User’s speech, Reddit asks the Court to carefully evaluate Plaintiff’s claims and engage in the requisite balancing test.

Reddit respectfully requests that the Court grant the Motion only if it concludes that Plaintiff has satisfied this burden.

II. BACKGROUND

A. Reddit

Reddit is a Delaware corporation with its principal place of business in San Francisco, California. Declaration of John Roche (“Roche Decl.”) ¶ 2. Reddit operates the reddit.com platform, a community of online communities called “subreddits,” where users gather to discuss shared interests. *Id.* Users generally participate on the platform pseudonymously, and Reddit does not require that users use or provide their real names. *Id.*

B. Plaintiff and the Doe Defendant(s)

Plaintiff seeks information to unmask the identity of the Reddit user who operates the account u/SOSilva7 (the “Target User”) in order to pursue his action for defamation, stalking, and intentional infliction of emotional distress pending in the United States District Court for the Southern District of Florida. *See* Mot. at 3. Plaintiff alleges that Defendant(s) published on various subreddits defamatory posts accusing Mr. Silva of engaging in sexual abuse and sexual harassment against “young women” in the modeling industry. *Id.* at 10-11.

C. The Subpoenas

On February 10, 2023, Plaintiff served an initial subpoena on Reddit (the “Initial Subpoena”), which sought oral testimony and documents that would reveal the identity of the Target User. *See* Roche Decl. ¶ 3. Reddit timely objected to the Initial Subpoena, asserting amongst other things, that it infringed upon the Target User’s First Amendment right to speak anonymously, and it improperly sought compliance more than 100 miles away from Reddit’s residence in violation of

1 Fed. R. Civ. P. 45. *Id.* The parties subsequently conferred on Reddit’s objections on multiple
 2 occasions, and at the same time, Reddit provided notice of the Initial Subpoena to the Target User on
 3 February 14, 2023. *Id.*

4 On March 31, 2023, Plaintiff served an Amended Subpoena (the “Amended Subpoena”) on
 5 Reddit that cured the place of compliance issue, narrowed the scope of the subpoena, and only
 6 sought documents. *See Roche Decl.* ¶ 4. Specifically, the Amended Subpoena—the subpoena at
 7 issue here—seeks non-content basic subscriber information for the Target User. *Id.* Reddit again
 8 provided the Target User notice, and timely objected to the Amended Subpoena, re-asserting its First
 9 Amendment objection. *Id.*

10 Thereafter, the parties continued their meet and confer efforts, agreeing that the Amended
 11 Subpoena only seeks non-content basic subscriber information and the only outstanding objection
 12 concerned the Target User’s First Amendment rights. *See Roche Decl.* ¶ 6. The parties ultimately
 13 agreed that a motion to compel would be necessary, and further agreed that any motion to compel
 14 that Plaintiff filed would be limited to having the court decide the First Amendment issue. *Id.*

15 In response, Plaintiff filed the instant Motion and Reddit provided user notice of the same on
 16 April 20, 2023. *See Roche Decl.* ¶ 6.

17 **III. ARGUMENT**

18 “It is well established that the First Amendment protects the right to anonymous speech.”
 19 *Music Grp. Macao Com. Offshore Ltd. v. Does*, 82 F. Supp. 3d 979, 983 (N.D. Cal. 2015) (cleaned
 20 up). “This protection applies with equal force to online speech.” *In re DMCA*, 608 F. Supp. 3d at
 21 876. As the Ninth Circuit has recognized, “[a]s with other forms of expression, the ability to speak
 22 anonymously on the Internet promotes the robust exchange of ideas and allows individuals to
 23 express themselves freely without ‘fear of economic or official retaliation ...[or] concern about
 24 social ostracism.’” *In re Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir. 2011) (*citing*
 25 *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341-42 (1995)). Enforcing a subpoena to unmask
 26 an unknown speaker on the Internet “poses a real threat to chill protected comment on matters of
 27 interest to the public. Anonymity liberates.” *Highfields Cap. Mgmt., L.P. v. Doe*, 385 F. Supp. 2d
 28 969, 980-81 (N.D. Cal. 2005).

1 Requiring litigants to meet First Amendment standards ensures that speech is not chilled
2 unnecessarily and that speakers are not unmasked inappropriately. Enforcing an unmasking
3 subpoena could enable “[a litigant] to impose a considerable price on [another’s] use of one of the
4 vehicles for expressing his views that is most likely to result in those views reaching the intended
5 audience. That ‘price’ would include public exposure of [a litigant’s] identity and the financial and
6 other burdens of defending against a multi-count lawsuit—perhaps in a remote jurisdiction.” *Id.* at
7 981.

8 Courts have therefore developed a standard for evaluating First Amendment rights where, as
9 here, the issuing party to a subpoena seeks to unmask an anonymous speaker in order to pursue
10 claims against that speaker. Specifically, “a court should (1) notify the speaker and provide them
11 with an opportunity to (anonymously) defend their anonymity; (2) require the party seeking
12 disclosure to make a prima facie showing on the merits of their claim; and (3) balance the equities,
13 weighing the potential harm to the party seeking disclosure against the speaker’s interest in
14 anonymity, in light of the strength of the underlying claim.” *In re DMCA*, 608 F. Supp. 3d at 876.

15 Plaintiff does not dispute that he must satisfy the standard applied in *In re DMCA*. *See* Mot.
16 at 7-8. The first prong of this test has likely been satisfied by way of Reddit providing notice to the
17 Target User of the Initial Subpoena, the Amended Subpoena, and the Motion. *See* Roche Decl. ¶ 3-
18 6. However, it is unclear to Reddit whether Plaintiff has satisfied the second and third prongs of the
19 *In re DMCA* test.

20 As an initial matter, Plaintiff did not file a declaration in support of the Motion. The absence
21 of a declaration may constitute a failure to “persuade the court that there is a real evidentiary basis
22 for believing that the [speaker] has engaged in wrongful conduct that has caused real harm to the
23 interests of the plaintiff.” *Wirt v. Twitter, Inc.*, 2021 WL 5919846, at *1; *see also id.* at *2 (relying
24 on plaintiff’s declaration to assess whether he provided “real evidentiary basis” to support his
25 claims); *Kechara House Buddhist Association Malaysia v. Does.*, 2015 WL 5538999, at *4 (plaintiff
26 may not rest on its pleadings to provide a “real evidentiary basis” for a defamation claim against Doe
27 Defendants).

Further, and relevant to assessing the balance of equities, Plaintiff's proposed unmasking could have a chilling effect on speech that is a matter of public concern, and therefore "at the heart of the First Amendment's protection." *Snyder*, 562 U.S. at 451-52 (speech that is "matter[] of public concern" is "at the heart of the First Amendment's protection."); *see, e.g., Guzman*, 2019 WL 1877184, at *6 (finding that defendant's Facebook post, which was about alleged sexual abuse, was a matter of public concern). Given the seriousness of the Target User's allegations, Reddit is not in a position to evaluate Plaintiff's claims or engage in the balancing test.

In short, it is unclear to Reddit whether Plaintiff has stated prima facie claims for defamation, stalking, and intentional infliction of emotional distress under Florida law, and whether on balance, the equities weigh in Plaintiff's favor. As such, Reddit asks the Court to adjudicate whether Plaintiff has sufficiently satisfied the applicable First Amendment standard.

IV. CONCLUSION

Reddit respectfully requests that this Court grant the Motion only if it concludes that Plaintiff has satisfied the First Amendment's requirements for unmasking an anonymous speaker.

Dated: May 3, 2023

PERKINS COIE LLP

By: /s/ Julie E. Schwartz

Julie E. Schwartz

Doris Alvarez-Reyes

ATTORNEYS FOR REDDIT, INC.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been served upon all counsel of record, via the Court's CM/ECF system on May 3, 2023, as follows:

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/s/ Allison L. Jones

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